

ENTERED

April 25, 2019

David J. Bradley, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

UNITED STATES OF AMERICA	§	
	§	
VS.	§	CRIMINAL ACTION NO. 2:19-CR-110
	§	
SAGRADO CORAZON PEREZ	§	

ORDER DENYING MOTION TO SUPPRESS

Before the Court is Sagrado Corazon-Perez (Corazon-Perez's) Motion to Suppress Evidence obtained from her vehicle. D.E. 13. Corazon-Perez is charged by indictment with two counts of illegally transporting aliens within the United States. D.E. 9. The Government responded (D.E. 15), and the Court heard the motion on March 27, 2019. For the following reasons, the Court DENIES the motion to suppress.

FACTS

On the evening of January 24, 2019, Border Patrol Agent Ross Jackson (Agent Jackson) was on roving patrol duty west of Freer, Texas. Around 7:30 p.m., he heard over his radio that two suspected illegal aliens were spotted through an infrared camera in the dense brush near Highway 44. But border patrol agents were unable to apprehend them. Later that night, Agent Jackson parked his vehicle along Highway 59 near its intersection with Highway 44. His vehicle was on an incline with the lights facing the direction of eastbound traffic to provide a vantage point to observe passing vehicles.

At approximately 10:40 p.m., Agent Jackson saw a Chevrolet Malibu traveling toward Freer at a high rate of speed. The two passengers in the vehicle were either slouching or reclining in their seats because their heads were barely visible through the

windows. Remembering the earlier report of suspected illegal aliens in the area, Agent Jackson began following the vehicle. Although he was driving 85 to 90 miles per hour, he had difficulty catching up to the vehicle. Despite passing a sign of a reduced speed limit, the vehicle continued moving at a fast speed. At no point did Agent Jackson see the driver initiate the vehicle's brakes.

Roughly one minute later, the vehicle entered the town of Freer. Agent Jackson saw the driver tap the brakes twice near turnoffs before abruptly turning into a gas station. As he pulled into the station, he saw the vehicle parked at a gas pump and the driver, Corazon-Perez, aggressively walking towards the store. Keeping her head down, she did not acknowledge that she saw his vehicle approaching her path. When she reached the front of his vehicle, Agent Jackson directed her to return to her car and he activated his lights. After he conducted an immigration investigation, he determined that the two passengers did not have legal status to be in the United States.

Arguing that there was no reasonable suspicion to detain her, Corazon-Perez moves to suppress the evidence seized as fruits of an illegal seizure.¹

DISCUSSION

The Fourth Amendment permits border patrol agents on roving patrol to conduct investigative stops only if they are “aware of specific, articulable facts, together with rational inferences from those facts, that reasonably warrant suspicion that the vehicle is involved in illegal activities.” *United States v. Garza*, 727 F.3d 436, 440 (5th Cir. 2013)

¹ Corazon-Perez also moves to suppress evidence and statements pursuant to the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution and the Texas Code of Criminal Procedure. She does not provide a legal basis for doing so and there are no facts indicating that any post-arrest statements were made.

(quoting *United States v. Cardona*, 955 F.2d 976, 980 (5th Cir. 1992)). In assessing whether reasonable suspicion supports stopping a vehicle near the border, this Court is guided by the factors set forth in *United States v. Brignoni-Ponce*, 422 U.S. 873, 885 (1975). Those factors include:

(1) the area's proximity to the border; (2) characteristics of the area; (3) usual traffic patterns; (4) the agents' experience in detecting illegal activity; (5) behavior of the driver; (6) particular aspects or characteristics of the vehicle; (7) information about recent illegal trafficking of aliens or narcotics in the area; and (8) the number of passengers and their appearance and behavior.

United States v. Cervantes, 797 F.3d 326, 329 (5th Cir. 2015) (quoting *United States v. Soto*, 649 F.3d 406, 409 (5th Cir. 2011)). No single factor is determinative. *United States v. Hernandez*, 477 F.3d 210, 213 (5th Cir. 2007). The Court reviews all the facts as a collective whole in light of the context and Agent Jackson's experience. *See United States v. Neufeld-Neufeld*, 338 F.3d 374, 380 (5th Cir. 2003).

The Government argues that the *Brignoni-Ponce* factors are not applicable here because Agent Jackson did not conduct a vehicle stop; rather he detained Corazon-Perez at the gas station. And thus the applicable law is set forth in *Terry v. Ohio*, 392 U.S. 1 (1968). The Court finds that reasonable suspicion supported the stop whether the facts are analyzed under *Terry* or *Brignoni-Ponce*. Corazon-Perez argues that the *Brignoni-Ponce* factors apply so the Court will consider those factors.

The area's proximity to the border. Although not a "bright line rule," the Fifth Circuit has established that a "a car traveling more than fifty (50) miles from the border is usually viewed as being too far from the border to support an inference that it originated

its journey there.” *United States v. Jones*, 149 F.3d 364, 368 (5th Cir. 1998). However, “the fact that the northbound vehicle was traveling from the direction of the Mexico–United States border [can be] a legitimate factor when viewed in conjunction with the other factors.” *Soto*, 649 F.3d at 409 (citing *United States v. Orozco*, 191 F.3d 578, 581 (5th Cir. 1999)). Agent Jackson testified that he first saw Corazon-Perez’s vehicle 60 to 70 miles from the border, traveling from the direction of Laredo, Texas, a border city with a dense population. This factor does not weigh particularly strongly in either party’s favor.

Characteristics of the area. This stretch of Highway 59 is surrounded by ranches and passes through a border patrol checkpoint. Agent Jackson testified that Highway 59 and Highway 44 are common routes for alien smuggling. The remote highways, which would make unusual road activity noticeable, the area’s reputation for alien smuggling, and the proximity to the checkpoint are characteristics that support his suspicion. *See Garza*, 727 F.3d at 441; *see also United States v. Chavez-Chavez*, 205 F.3d 145, 150 (5th Cir. 2000). This factor weighs in the Government’s favor.

Usual traffic patterns. Agent Jackson testified that vehicles normally slow down before entering Freer, but Corazon-Perez continued driving at a fast speed. Moreover, he testified that smuggling organizations will transport aliens during the agents’ shift changes to avoid detection. Corazon-Perez drove by him about twenty minutes before he was scheduled to finish his shift, heightening his suspicion. *See Jones*, 149 F.3d at 370 (“[T]he fact that [defendant] came through the border checkpoint . . . around the time of

shift change should be viewed as part of the totality of the circumstances in this case that may add up to reasonable suspicion.”). This factor weighs in the Government’s favor.

The agent’s experience in detecting illegal activity. Relevant to this factor is the agent's time as a border patrol agent and his specialized training in detecting illegal activity. *See United States v. Arvizu*, 534 U.S. 266, 273 (2002); *see also Garza*, 727 F.3d at 441 (finding that the agent’s training at the border patrol academy and experience patrolling the area for two and a half years “reasonably led him to conclude that something illegal may have been afoot.”). Agent Jackson has worked for border patrol for about ten years, including one year in Freer and seven years in Kingsville, Texas. He received training at the border patrol academy and spent a year and a half in highway interdiction of alien smuggling in Kingsville, which has a similar terrain and highway structure as Freer. By Agent Jackson’s estimation, he has investigated 40 alien smuggling cases, 15 of which were in the Freer area. This factor weighs in the Government’s favor.

Behavior of the driver. “[E]rratic driving or obvious attempts to evade officers can support a reasonable suspicion.” *Brignoni-Ponce*, 422 U.S. at 885; *see Neufeld-Neufeld*, 338 F.3d at 382 (“[The driver] acted suspiciously by failing to acknowledge the marked patrol car and by sitting stiffly and staring straight ahead.”). Agent Jackson witnessed Corazon-Perez drive fast, tap on her brakes at two turnoffs which he perceived as indecisiveness, turn abruptly into the gas station, and avoid eye contact with him. He testified that in the past, smugglers have pulled into gas stations to avoid law enforcement. These facts viewed together weigh in the Government’s favor.

Particular aspects or characteristics of the vehicle. Agent Jackson testified that sedans are a common vehicle for alien smugglers and the only vehicles on the highway at that time of night are usually trucks returning home from work in the oil fields or traveling to the ranches. *See United States v. Robles-Avalos*, 895 F.3d 405 (5th Cir.), *cert. denied*, 139 S. Ct. 493 (2018) (“[A] sedan stood out from the typical truck or SUV used by ranchers.”). This factor weighs in the Government’s favor.

Information about recent illegal trafficking of aliens or narcotics in the area. Earlier that evening, border patrol agents had spotted two suspected illegal aliens northwest of Freer off of Highway 44. And Agent Jackson recalled this when he spotted the vehicle. Corazon-Perez argues that it is unlikely that these suspected aliens would have traveled south towards Highway 59 and the Freer checkpoint. However, the Court finds that this factor weighs in the Government’s favor.

The number of passengers and their appearance and behavior. Agent Jackson immediately noted that the two passengers were reclined or slouched. *See United States v. Zapata-Ibarra*, 212 F.3d 877, 883 (5th Cir. 2000) (“The number of passengers and their slouching, even though ordinarily fitting with innocent travel, may provide a composite picture sufficient to raise reasonable suspicion in the minds of experienced officers.”). In light of the report of two suspected illegal aliens, the positioning of the two passengers reasonably increased his suspicion. This factor weighs in the Government’s favor.

Accordingly, when taken in their totality, the circumstances support Agent Jackson’s reasonable suspicion that Corazon-Perez’s vehicle was involved in illegal

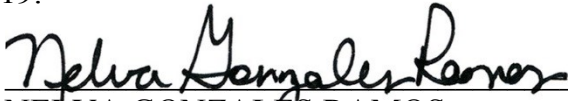
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activity. The Court finds that Agent Jackson did not engage in an illegal search and seizure and there is no basis to suppress the evidence obtained.

CONCLUSION

For the reasons set forth, the Court DENIES Defendant Sagrado Corazon-Perez's Motion to Suppress Evidence (D.E. 13).

ORDERED this 25th day of April, 2019.



NELVA GONZALES RAMOS
UNITED STATES DISTRICT JUDGE